

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MINI-DOZER WORK,)	
WAYNE R. RICHARDSON,)	No. 63102-1-I
)	
Appellants,)	DIVISION ONE
)	
v.)	
)	
TOSHI KASAHARA, (a member of)	
Windermere Property Management dba)	
The Foreclosure Group),)	
)	
Respondent,)	UNPUBLISHED OPINION
)	
THE FORECLOSURE GROUP,)	FILED: June 14, 2010
)	
Defendant.)	
_____)	

Becker, J. — The trial court dismissed Wayne Richardson’s suit against Toshi Kasahara because Richardson failed to make proper service on Kasahara. Richardson appeals the court’s subsequent denial of his motions to vacate the dismissal and to reconsider the denial of his motion to vacate. Because Richardson made no showing in his motions that the court erred in concluding that service was inadequate, we affirm.

FACTS

The facts of this case and earlier cases involving the same real property are well

known to the parties and are discussed here only as necessary to resolve the issue on appeal. Apparently through his business, Mini-Dozer Work, Richardson owned residential real property. After Richardson failed to make payments on a loan secured by the property, the mortgage holder foreclosed. Richardson challenged the foreclosure sale in a superior court action, but his suit was dismissed. This court affirmed the dismissal on appeal, and the Supreme Court denied review of this court's decision. Kasahara, who purchased the property, thereafter evicted Richardson by means of an unlawful detainer action. Richardson again appealed, but this court dismissed his appeal. Richardson then filed the suit at issue here in superior court, in which he sought to have title to the property registered in his name.

Kasahara filed a motion to dismiss, arguing that Richardson's suit should be dismissed for want of personal service and, alternatively, that the action was barred by res judicata because Richardson merely sought to relitigate issues conclusively resolved against him in earlier proceedings. Richardson filed no responsive affidavit, but filed numerous pleadings and other materials advancing various arguments.

At the hearing on Kasahara's motion, Richardson acknowledged that he had not personally served Kasahara. He nonetheless maintained that because he had filed his suit under the "Torrens Act," chapter 65.12 RCW, he had properly served Kasahara by publication without an affidavit demonstrating necessity or otherwise complying with RCW 4.28.080 or RCW 4.28.100. The court concluded, however, that RCW 65.12.135, on which Richardson relied, did not apply because it allowed service by publication only on "unknown persons or parties" and Kasahara was known to Richardson. Concluding that its ruling

required dismissal of the suit without prejudice, the court did not reach Kasahara's alternative arguments.

Richardson did not appeal, but later filed a motion to vacate the order granting summary judgment. The trial court denied Richardson's motion and denied his subsequent motion to reconsider the denial of vacation.

Richardson now appeals the denial of his motions to vacate and reconsider.

DISCUSSION

As in the trial court, Richardson attempts to advance arguments substantively challenging Kasahara's title. But the trial court's rulings on appeal here were based exclusively on the question of whether Richardson obtained personal jurisdiction against Kasahara through service by publication. We accordingly limit our review to that issue.

We review a trial court's denial of a CR 60(b) motion to vacate for manifest abuse of discretion. Haley v. Highland, 142 Wn.2d 135, 156, 12 P.3d 119 (2000); Biurstrom v. Campbell, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980). An abuse of discretion occurs when a trial court bases its decision on untenable grounds or untenable reasons. Noble v. Safe Harbor Family Pres. Trust, 167 Wn.2d 11, 17, 216 P.3d 1007 (2009). Similarly, we review a ruling on a motion to reconsider for an abuse of discretion. Meridian Minerals Co. v. King County, 61 Wn. App. 195, 203, 810 P.2d 31, review denied, 117 Wn.2d 1017 (1991).

Although his arguments are not entirely clear, it appears that Richardson makes

four contentions that actually go to the basis of the trial court's order.

First, Richardson repeats his argument from the motion hearing that, even though he knew of Kasahara and his interest in the property, the phrase "unknown persons or parties" in RCW 65.12.135 applied to Kasahara because he did not know Kasahara's home address. But Richardson has shown no flaw in the trial court's rejection of this claim as a matter of law under the plain language of the statute:

There is no assertion that Mr. Kasahara is a nonresident defendant. So the Court must construe the language, unknown persons or parties. In the context of the Torrens Act Petition, unknown persons and parties refers to persons who may have a potential interest in the subject property but who are not known by name and, therefore, the only means of identification of them is generally reference to unknown persons or parties, or as John Does and Jane Does, and identify them as having an interest in the subject property.

That is not the situation here. Mr. Kasahara is a known individual. Whether or not his address is known to Mr. Richardson does not make him an unknown person for purposes of the statute 65.12.135. As a consequence, it is necessary for Mr. Kasahara to be personally served.

For the first time on appeal, Richardson also contends that Kasahara was subject to service by publication under RCW 65.12.135 as a "nonresident defendant" because, he asserts, Kasahara supposedly lived in a different county than the property in issue. Coming for the first time on appeal, this argument is too late. RAP 2.5(a). Moreover, Richardson has not cited to the record or to any authority in support of this contention. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." Palmer v. Jensen, 81 Wn. App. 148, 153, 913 P.2d 413 (1996), remanded on other grounds, 132 Wn.2d 193, 937 P.2d 597 (1997).

Richardson also repeats a claim from his motion to vacate that he achieved

personal service on Kasahara after the dismissal and therefore somehow cancelled the dismissal order. But Richardson simply misunderstands the effect of the order dismissing his claim without prejudice. Richardson cites no authority supporting this claim and nothing in CR 60 authorizes vacation of a prior order dismissing a suit for want of service if service is later achieved only after the dismissal is effective.

Richardson repeats a further argument from his motion to vacate that dismissal was improper because of the supposed irregularity that Kasahara's motion to dismiss referred to the plaintiff as "Wayne R. Richardson d/b/a Mini-Dozer Work," rather than as "Mini-Dozer Work, Wayne R. Richardson," as Richardson captioned the summons he filed at the beginning of the suit. Because Richardson did not use the same caption on the summons as he did in other pleadings, it is not clear that this constituted an irregularity at all. But even assuming it did, Richardson waived any claim of error by not raising it when the trial court considered the motion. See Spratt v. Davidson, 1 Wn. App. 523, 526, 463 P.2d 179 (1969). Moreover, Richardson made no showing of actual prejudice, which would be required for relief in any event. Spratt, 1 Wn. App. at 526.

Finally, Richardson also assigns error to the trial court's award of statutory attorney fees to Kasahara at the conclusion of the proceedings. But he fails to support this assignment of error with any reasoned argument and, therefore, "is deemed to have abandoned it." In re Marriage of Lutz, 74 Wn. App. 356, 372, 873 P.2d 566 (1994).

The appeal is wholly without merit. We affirm the trial court in all respects.

Becker, J.

WE CONCUR:

Appelwick, J.

Jan, J.